

Michael Sear
9/24/2015

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO JUDICIAL

No. 1:13-CV-01005 JB/SCY

ELIA LEON, individually and as
Personal Representative
of the Estate of Martin Leon, Deceased,

Plaintiff,

-vs-

FEDEX GROUND PACKAGE SYSTEM, INC.,

Defendant.

VIDEOTAPED 30(b)(6) DEPOSITION OF MICHAEL SEAR

9:36 a.m.
September 24, 2015
At the office of:
RODEY LAW FIRM
201 Third Street NW
Albuquerque, New Mexico

PURSUANT TO THE RULES OF CIVIL PROCEDURE

this deposition was:

TAKEN BY: PAUL D. BARBER

ATTORNEY FOR PLAINTIFF

Clark & Associates
505-205-8435



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<p style="text-align: right;">Page 22</p> <p>1 is in charge of it?</p> <p>2 A If we're speaking specifically to the</p> <p>3 linehaul operation, it could be a variety of people in</p> <p>4 the linehaul department in that particular station. It</p> <p>5 could be a senior manager. It could be a manager. I</p> <p>6 can't say for certain which person for sure actually</p> <p>7 puts that information in that folder or file.</p> <p>8 Q It's done on a station by station basis; is</p> <p>9 that true?</p> <p>10 A Yes, driver qualification files are generated</p> <p>11 and maintained at a station in which the driver is</p> <p>12 domiciled.</p> <p>13 Q Now, we've taken a couple of depositions in</p> <p>14 this case of FedEx people, including the station</p> <p>15 manager in the City of Industry. And so far none of</p> <p>16 them has had a CDL. Is that not a -- does FedEx not</p> <p>17 require its station managers or safety managers to</p> <p>18 obtain a commercial driver's license?</p> <p>19 A To my knowledge, no, they do not.</p> <p>20 Q And FedEx does not require training in motor</p> <p>21 carrier safety standards of the type required for a CDL</p> <p>22 of its station managers?</p> <p>23 A So to clarify, you're asking if station</p> <p>24 manager -- if FedEx requires station management to go</p> <p>25 through the type of training that's required to obtain</p>	<p style="text-align: right;">Page 24</p> <p>1 A She is the senior manager, a senior manager</p> <p>2 in the safety department in Pittsburgh.</p> <p>3 Q And to whom does she report, if you know?</p> <p>4 A She reports to our managing director,</p> <p>5 Kimberly Whigham.</p> <p>6 Q And she's managing director of what?</p> <p>7 A Of safety.</p> <p>8 Q Is there anyone above her who is specifically</p> <p>9 charged with safety? That's a bad question.</p> <p>10 Is there anyone above her? In the</p> <p>11 safety programs of FedEx, is there anyone above</p> <p>12 Ms. Whigham?</p> <p>13 A Yes.</p> <p>14 Q Who's that?</p> <p>15 A Scott Mugno. He's our Vice President of</p> <p>16 Safety and Maintenance.</p> <p>17 Q Now, just to be clear: All of you are</p> <p>18 involved in corporate-wide safety; is that true?</p> <p>19 A We're all domiciled out of our corporate</p> <p>20 headquarters in the safety department. Maybe I don't</p> <p>21 understand exactly what you're asking.</p> <p>22 Q Okay. You all work at the headquarters, the</p> <p>23 corporate headquarters, true?</p> <p>24 A The names that I've just referred to, yes,</p> <p>25 that's correct.</p>
<p style="text-align: right;">Page 23</p> <p>1 a CDL?</p> <p>2 Q Yes.</p> <p>3 A To my knowledge, no, they do not.</p> <p>4 Q And FedEx does not require its station</p> <p>5 managers to go through, to go through a Smith System</p> <p>6 course, for example?</p> <p>7 A To my knowledge, no.</p> <p>8 Q Is there anyone at the station operation who</p> <p>9 is required to have a commercial driver's license?</p> <p>10 MS. SAIZ: Object to form.</p> <p>11 A Are we talking FedEx Ground employees?</p> <p>12 Q Yes.</p> <p>13 A To my knowledge, no.</p> <p>14 Q FedEx Ground does not provide training to the</p> <p>15 linehaul drivers, true?</p> <p>16 A True.</p> <p>17 Q FedEx Ground -- let me go back to your</p> <p>18 position.</p> <p>19 You're the Manager of Safety Programs</p> <p>20 and Response?</p> <p>21 A Yes, sir.</p> <p>22 Q Who is your supervisor? To whom do you</p> <p>23 report?</p> <p>24 A Currently it is Megan Melichar.</p> <p>25 Q And who is she?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q And what I'm trying to find out is: Do you</p> <p>2 ever -- are you regionalized or do you have specific</p> <p>3 areas of responsibility that are not -- that are</p> <p>4 smaller areas than national, or north America?</p> <p>5 A I would say that, in general, the safety</p> <p>6 department team members that are domiciled at our</p> <p>7 corporate headquarters are on a network scale as far as</p> <p>8 safety.</p> <p>9 Q So looking at you, personally, you don't have</p> <p>10 responsibility over just a part of the United States?</p> <p>11 A That's correct.</p> <p>12 Q You have respon -- whatever your</p> <p>13 responsibilities are, they apply systemwide, true?</p> <p>14 A True.</p> <p>15 Q Now tell us what your responsibilities are.</p> <p>16 A My responsibilities, I manage a group that's</p> <p>17 responsible for accident classification from a</p> <p>18 preventability standpoint.</p> <p>19 My group's responsible for FedEx</p> <p>20 Ground's participation in industry related events.</p> <p>21 Q What are you talking about there?</p> <p>22 A Examples might include truck driving</p> <p>23 championships, community events, things such as that.</p> <p>24 Q Okay.</p> <p>25 A My group is responsible for safety related</p>

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<p style="text-align: right;">Page 50</p> <p>1 MS. SAIZ: Object to foundation. 2 A Yes. And I would say it's important for 3 every motorist. 4 Q And as a former instructor for the Smith 5 System, you know that that's a big part of safe 6 driving, true, being aware of your surroundings, true? 7 A Yes. 8 Q So if the FedEx driver, FedEx Ground driver, 9 was in the left lane and he changed into the right lane 10 and collided with the other tractor-trailer, do you 11 have any explanation for why he did that? 12 MS. SAIZ: Object to form and 13 foundation. And also, do not discuss anything 14 that we've talked about in terms of our case 15 theories, or anything else for that matter. 16 A I would have to ask as to why he did what? 17 Q Why did he change lanes? 18 MS. SAIZ: Object to form and 19 foundation. 20 A I can't answer that. I don't know. 21 Q Why did he crash into the other truck? 22 MS. SAIZ: Object to form and 23 foundation. You do not have to answer that 24 question. That is an expert question for an 25 accident reconstructionist. He is here as a</p>	<p style="text-align: right;">Page 52</p> <p>1 today is my only day, the Plaintiff's only opportunity 2 to ask you questions, ask the corporation questions 3 about these listed items. 4 So Item 10 says: "Other vehicle 5 accidents, lost time accidents, or serious accidents 6 involving other motorists by vehicles operating under 7 the FedEx Ground Package System, Inc.'s operating 8 authority or DOT number in the three years before the 9 crash described in the Complaint." 10 I'm wondering what you did to prepare to 11 answer that, to talk about that item. 12 A I reviewed the documents that were provided 13 in response to this question, which I believe were 14 requested, is the title of the Accident Register. I 15 viewed those documents. 16 (Exhibit C Marked for Identification) 17 Q I'm going to hand you a document we'll mark 18 as Exhibit C. 19 MR. BARBER: Do you need a copy of this? 20 MS. SAIZ: No. I can look on with him 21 if I need to. 22 Q It's actually more than one document, but 23 they are all Bates stamped in the lower right hand 24 corner with the Defendant FedEx Bates Stamp No. 01322 25 is on the first page, and 01423 is on the last page; do</p>
<p style="text-align: right;">Page 51</p> <p>1 30(b)(6). That is way beyond the scope of this 2 Notice. 3 A I can't answer that. 4 Q You do know, in your position as a safety 5 manager for FedEx, for the whole system, you do know 6 that FedEx Ground did not do anything to train this 7 FedEx truck driver in safe lane changing, true? 8 MS. SAIZ: Object to form. 9 A True. 10 Q Have you reviewed the records of other FedEx 11 accidents prior to the crash involved in this case? 12 That's poorly worded. 13 Before coming to the deposition today, 14 did you make any attempt to look at records of FedEx 15 crashes that occurred in the years before November, 16 2011? 17 A You're asking if I personally made any 18 attempt to look at -- 19 Q Yes. 20 A -- any FedEx Ground accidents that happened 21 in the years prior to this? 22 Q Yes. 23 A That just seems so broad. I'm not sure what 24 you're asking. I'm sorry. 25 Q Let's look at Item 10 on Exhibit A. And</p>	<p style="text-align: right;">Page 53</p> <p>1 you see that? 2 A I do. 3 Q So that's about a hundred and one pages, 4 true? If my math is correct. From 1322 to 1423. 5 A I believe you're correct. 6 Q A hundred and one. And Exhibit C represents 7 what was provided by FedEx Ground as their Accident 8 Register from December 1st, 2008 until either 9 December 1st or November 30th. 10 MS. SAIZ: I thought we went to 11 December 30th if -- that's from memory. 12 Q Till December 31st, 2011. 13 MS. SAIZ: And just for the record, 14 Paul, this date, there's a middle part in here I 15 had to combine -- 16 MR. BARBER: Right. On Page 1389 it 17 actually indicates that that's the last 18 approximately one year. And the first label is 19 for approximately two years. 20 MS. SAIZ: Correct. 21 A You're correct, I see that, yes. 22 Q So these represent, looks like, three years 23 and one month -- 24 MS. SAIZ: Yeah. 25 Q -- of an Accident Register, correct?</p>

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<p style="text-align: right;">Page 62</p> <p>1 the safety addendum.</p> <p>2 Q Is there any reason that that language could</p> <p>3 not have been required of the contractors 10 years ago?</p> <p>4 MS. SAIZ: Object to foundation.</p> <p>5 Q Or any time in between?</p> <p>6 A I don't know.</p> <p>7 Q Has FedEx put in place, since the adoption of</p> <p>8 this new language, has FedEx put into place any method</p> <p>9 of monitoring or checking on that training?</p> <p>10 A So, this language, as I stated, is very new</p> <p>11 within the last month to two months and, yes, there</p> <p>12 will be. It's not in effect yet, but my understanding</p> <p>13 is that starting in the spring of 2016 there will be</p> <p>14 random compliance checks done on the programs that the</p> <p>15 contractor is agreeing to maintain within their</p> <p>16 business. So, yes, it's forthcoming.</p> <p>17 Q And as of 2010, 2011 there was no such</p> <p>18 language in the contract, true?</p> <p>19 A That language did not exist in the addendum</p> <p>20 in 2010 or '11, correct.</p> <p>21 Q And in 2010 and '11 there was no monitoring</p> <p>22 of driver training or the contractor's efforts to</p> <p>23 provide driver training or safety training; is that</p> <p>24 true?</p> <p>25 A Monitoring of these contractor's efforts to</p>	<p style="text-align: right;">Page 64</p> <p>1 the drivers are qualified to drive. And in the case of</p> <p>2 this driver, in particular, Federico, I just recall</p> <p>3 from reviewing his information sheet that it was stated</p> <p>4 that he did, in fact, drive -- or attend, I believe,</p> <p>5 I'm pulling from memory, but an Imperial Truck Driving</p> <p>6 School. So proof was provided that he was trained via</p> <p>7 a school and, therefore, FedEx Ground determined that</p> <p>8 he was, in fact, qualified to operate under FedEx</p> <p>9 Ground's DOT number.</p> <p>10 Q You did not answer my question.</p> <p>11 A I'm sorry.</p> <p>12 MR. BARBER: Can we go back and read the</p> <p>13 question because I want it read back exactly.</p> <p>14 MS. SAIZ: Paul, do you want to break</p> <p>15 around noon for lunch?</p> <p>16 MR. BARBER: Yes.</p> <p>17 (Record read as requested.)</p> <p>18 A Yes.</p> <p>19 Q Okay. Do you believe that FedEx Ground can</p> <p>20 delegate that responsibility to others?</p> <p>21 MS. SAIZ: Object to form.</p> <p>22 A I believe that it's ultimately FedEx Ground's</p> <p>23 responsibility to ensure that the drivers that are</p> <p>24 operating under FedEx Ground's DOT number are</p> <p>25 qualified.</p>
<p style="text-align: right;">Page 63</p> <p>1 train their drivers?</p> <p>2 Q Yes.</p> <p>3 A To my knowledge, no.</p> <p>4 Q Monitoring, that's a fancy word, but I'm just</p> <p>5 talking about keeping track of.</p> <p>6 A I understand.</p> <p>7 Q FedEx did not keep track of that training,</p> <p>8 true?</p> <p>9 A To my knowledge, that's true. And that's</p> <p>10 based off the fact that that training was the</p> <p>11 responsibility of the contractor to conduct.</p> <p>12 Q Do you believe it was not the responsibility</p> <p>13 of FedEx Ground?</p> <p>14 MS. SAIZ: Object to form.</p> <p>15 A What, in particular, may I ask, please?</p> <p>16 Q Safety training, over-the-road safety</p> <p>17 training.</p> <p>18 A Well, through the contract I know that</p> <p>19 contractors agree to provide drivers that are qualified</p> <p>20 and trained to operate vehicles they're operating.</p> <p>21 Q Yeah, the contract says what it says. And</p> <p>22 what I'm asking is: Do you believe that, as a motor</p> <p>23 carrier, FedEx must make sure that its drivers are</p> <p>24 qualified and trained to operate safely?</p> <p>25 A Well, I'll say that FedEx does make sure that</p>	<p style="text-align: right;">Page 65</p> <p>1 Q And when you said Mr. Martinez-Leandro was</p> <p>2 qualified, you meant that he had had the minimal -- he</p> <p>3 had the minimal qualifications in his driver</p> <p>4 qualification file, true?</p> <p>5 A I would say that I meant that he met the</p> <p>6 qualification criteria as it was stated in the</p> <p>7 effective addendum and/or operating agreement at that</p> <p>8 time.</p> <p>9 Q Okay. You do not know whether or not, in the</p> <p>10 three years before this fatal crash, he had had any</p> <p>11 safety training in over-the-road driving, true?</p> <p>12 A Can you define "it," please. You said "it"</p> <p>13 had any training.</p> <p>14 Q I mean he, Mr. Martinez-Leandro.</p> <p>15 A Specifically?</p> <p>16 Q Yes.</p> <p>17 A I don't know.</p> <p>18 Q FedEx does not track such training above the</p> <p>19 minimum qualifications required in the driver</p> <p>20 qualification file, true?</p> <p>21 A At that time, true.</p> <p>22 Q And again, I'm not trying to be tricky here.</p> <p>23 This case involves what may be an improper lane change</p> <p>24 by Mr. Martinez-Leandro. And you don't know whether or</p> <p>25 not Mr. Martinez-Leandro had had any training in</p>

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